IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5421 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALVANTSINGH PRAVINSINGH PARMAR

Versus

POLICE COMMISSIONER

Appearance:

MR MITUL K SHELAT for the Petitioner.

Ms.Harsha Devani, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/01/2002

ORAL JUDGEMENT

The father of the petitioner died while in service on 7.6.1998. After his death, the petitioner applied for compassionate appointment. It was requested by the petitioner that he may be absorbed on compassionate ground. However, that application was

rejected on the ground that the total income of the family of the deceased is more than Rs.2,500/-. The said decision is placed on record at page 36, Annexure `E'. Reading the said order, it is clear that while coming to the conclusion about the income of the family of the deceased, the pension income is also taken into consideration. The pension income is Rs.2,067/- per month. In view of the various decisions of this Court, the Authority is not required to take into consideration the pension income while deciding the quantum of the income of the family of the deceased. However, Ms. Harsha Devani, learned AGP, submitted that pension income is required to be taken into consideration. According to her, the appointment is claimed under the G.R. dated 13.10.1975. However, it is required to be noted that this Court (Coram : M.R. Calla, J.) in the order passed in Special Civil Application No.11020 of 1993 has taken the view that pension income is not required to be taken into consideration. L.P.A. No.739 of 1999 filed against the aforesaid judgment in Special Civil Application No.11020 of 1993 is dismissed by a Division Bench of this Court (Coram : C.K. Thakker & C.K. Buch, JJ.) vide order dated 13.8.1999. In that view of the matter, it is clear that while deciding the question of quantum of income of the family of the deceased, pensionary benefits are not required to be taken into consideration. The impugned decision dated 3.3.2001 is quashed and set aside. The matter is sent back to the Department for reconsideration. While taking the fresh decision and while arriving at the quantum of the income of the deceased, family pension income is not required to be taken into consideration. The decision in this behalf may be taken within a period of three months from the date of receipt of the writ from this court.

Petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

Writ of this Court may be sent forthwith.

(P.B. Majmudar, J.)

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(apj)